Why Are You Here?

§ 160A-87. Ethics education program required.
(a) All members of governing boards of cities, counties, local boards of
education, and local government agencies, boards, commissions, or any other body or entity
that makes policy decisions concerning the local government shall receive a minimum of two
clock hours of ethics education within 12 months after initial election or appointment to the
office and again within 12 months after each subsequent election or appointment to the
office.
(b) The ethics education shall cover laws and principles that govern conflicts of
interest and ethical standards of conduct at the local government level.
(c) The ethics education may be provided by the North Carolina League of
Municipalities, North Carolina Association of County Commissioners, North
Carolina School Boards Association, the School of Government at the University
of North Carolina at Chapel Hill, or other qualified sources at the choice of the
governing board.
(d) The clerk to the governing board shall maintain a record verifying receipt of
the ethics education by each member of the governing board.

Ethics are the principles that guide your conduct
and actions as a board member and a board.
How is this Different from State Ethics Training?

- State law requires covered persons to attend State Ethics training:
  - Includes Members of State Boards and Commissions
  - Includes Community College Boards of Trustees
  - Covers State ethics and lobbying laws
- If covered by G.S. 160A-87, must still attend local government ethics training

Each board of county commissioners must adopt a code of ethics.

1. Ask for a copy of your board’s code of ethics.
2. Review the code.
3. Discuss any questions/issues with other board members, county attorney, and county manager.
4. Suggest changes/additions.

Code of Ethics

1. Obey all applicable laws
2. Uphold integrity and independence of your office
3. Avoid impropriety in the exercise of your official duties
4. Faithfully perform the duties of your office
5. Conduct board business in an open and public manner

Follow All Applicable Laws

What Statute Says We Can Do It?

A county may only undertake activities that it has been granted authority to undertake

Sources of Authority

- General Laws (eg Ch. 153A, 160D, 143)
- Local Acts

Limits on Authority

- Federal Law
- State Constitution
- State Regulations
Uphold Integrity, Avoid Impropriety, & Faithfully Perform

1. What duties do you owe to the public?
2. What duties do you owe to the county?
3. What duties do you owe to other board members?
4. What does it mean to act with integrity as a commissioner?
5. What is independent decision-making?
6. What else is involved in faithfully performing your duties?
7. How do you address conflict?
8. Who do you go to for help?

Conduct Business in an Open & Public Manner

If following public records and open meetings laws, how do you conduct business?

Duty to Vote

County commissioners have a legal duty to vote, imposed by statute.

Unless a statutory exception applies, a board member must vote.

There is no "general authority" to recuse—a statutory exception must apply.

§ 153A-44. Members excused from voting.
The board may excuse a member from voting, but only upon questions involving the member’s own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, or 105D-109. For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member’s own financial interest or official conduct.
When Not to Vote

<table>
<thead>
<tr>
<th>Does the Matter Involve</th>
<th>Do You Have A</th>
<th>If So …</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative Decision Regarding a Development Regulation G.S. 160D-109(a)</td>
<td>Direct, substantial, and readily identifiable financial interest in the outcome of the matter</td>
<td>DON’T VOTE (Statutory prohibition)</td>
</tr>
<tr>
<td>Rezoning Petition or Zoning Text Amendment G.S. 14-234(a)</td>
<td>Close familial, business, or other associational relationship with applicant for zoning text amendment or landowner of property subject to rezoning petition</td>
<td>DON’T VOTE (Statutory prohibition)</td>
</tr>
<tr>
<td>Quasi-Judicial Hearing G.S. 160D-109(d) (land use matters)</td>
<td>Fixed opinion prior to the hearing, undisclosed ex parte communications, close familial, business, or other relationship with an affected person, or financial interest in outcome</td>
<td>DON’T PARTICIPATE OR VOTE (Statutory prohibition)</td>
</tr>
<tr>
<td>Public Contract G.S. 14-234</td>
<td>Prohibited “direct benefit” that you or your spouse would derive under the contract</td>
<td>DON’T PARTICIPATE OR VOTE (Statutory prohibition)</td>
</tr>
<tr>
<td>All Other Matters G.S. 153A-44</td>
<td>Financial interest in the matter or the matter involves your own official conduct</td>
<td>MAY BE EXCUSED FROM VOTING (Statute authorizes board to excuse member from voting)</td>
</tr>
</tbody>
</table>

What is a Financial Interest?

A board member may be excused from voting if the matter involves his or her “own financial interest.”

Statute does not define “own financial interest.”

Factors to consider:
- Number of people affected
- Extent of financial interest (positive or negative)
- Likelihood of impact

What is a “close familial” relationship?

A spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. (G.S. 160D-109(f)).

Financial Interest Continuum

Affects many people, nominal impact, remote likelihood ✅

Affects board member only, significant impact, strong likelihood ✅
A County Commissioner’s “Own . . . Official Conduct”

Board member may be excused from voting if the matter involves his or her “own . . . official conduct”

Statute does not define “official conduct”

Potential Excusal Scenarios:

• Voting to Censure a Member
• Voting to Excuse a Member from Voting on a Matter Involving a Member’s “Own Financial Interest”

Self-Benefiting in Public Contracting Prohibited

G.S. 14-234

Requirements for the small jurisdiction exception:

1. Must be approved at regular meeting in open session
2. The conflicted public official cannot participate in any way
3. The total annual amount of contracts made with the conflicted official must be specifically noted in the audited annual financial statement
4. The governing board must post a conspicuous sign in a public place of its own choosing above each contract that cannot be cured by excusing the conflicted board member from voting

Certain types of contracts do not trigger a violation:

1. Banks and regulated utilities contracts
2. Friendly condemnation
3. Spouse employment contracts
4. Public assistance programs
5. Certain grants under 14-234(b)(3)
6. Grants or other financial assistance from the Tobacco Trust Fund under certain circumstances per 14-234(b)(4)
7. Public hospitals under 14-234(b)(5)
8. Small Jurisdiction Exception*
Conflict of Interest: 14-234.3

“Public official” is:
- Any individual elected OR appointed to a governing board of a political subdivision.

1. Deliberating or voting;
2. Attempting to influence another that is voting;
3. Soliciting or accepting a gift or favor (including future employment) in exchange for recommending / influencing award of contract

An incorporated or unincorporated nonprofit corporation, organization, or association organized or operating in the State primarily for tax-exempt purposes AND of which the public official is a director, officer, or governing board member.*

*Does NOT include nonprofit corporations created by State or its political subdivisions.

**Unless an exception applies.

Public official must record recusal with the clerk AND NOT “knowingly participate”.

G.S. 14-234.3 Exceptions

Certain types of contracts do not trigger a violation:
1. Contracts Between Public Agencies and Banks or Regulated Utilities
2. Friendly Condemnation
3. Employment of a Spouse of a Public Officer
4. Public Assistance Payments
5. Small Jurisdiction
Is It Legal? Spouse Marketing
A board of county commissioners wants to hire a marketing and PR agency to help it draft social media policies and provide training on board members’ and employees’ social media use. Can the board hire the marketing firm that employs one of the commissioner’s husbands?

Is it legal?

Is It Legal? Sister Contractor
A county board of commissioners is considering awarding a multi-million dollar construction contract to a commissioner’s sister. The sister’s company is the lowest responsive, responsible bidder.

Is it legal for the commissioner to vote on her sister’s construction contract?

Is It Legal? Council Member Engineer
An engineer under contract with the county to design an upgrade to the county’s water system is elected to the board of county commissioners.

Is it legal for the county to continue to use the commissioner’s engineering services after she takes office?
Is It Legal? Nonprofit Board

A county commissioner also serves on the Boys and Girls Club Board of Directors. The Club is seeking grant funds from the county for after-school programs. The potential grant contract comes before the board of commissioners for consideration.

Is it legal for the county commissioner to participate in the discussions and vote on the grant contract?

No. The commissioner must recuse himself under 14-234.3.

Excusal v. Recusal

“EXCUSED” FROM VOTING

• own financial interest; official conduct; exceptions to contract prohibition; and non-profit contracts
• other board members decide/vote
• member whose potential interest or conduct should not vote

“RECUSAL”

• land use matters

“OBJECTION”

• if member does not recuse, → remaining members vote on objection

Practitioner’s Advice

• Fine tune your ethical (and political) antenna
• Consult with your attorney
• Make a plan
• Consider whether to publicly disclose and get “cover,” even when there is not a disqualifying conflict
Cannot solicit or receive any gift, favor, or promise of reward in exchange for influencing or attempting to influence the award of a contract
Class 1 Misdemeanor!
G.S. 14-234(a)(3)

If you award or administer public contracts, you cannot receive a gift or a favor from a contractor
Past, present or future contractor
Class 1 Misdemeanor!
G.S. 133-32

Gifts to the County?
• Transportation, food, lodging for county business?
• Consider addressing in your Code of Ethics
• Approvals/Reporting?
In a conversation about another matter, the finance officer makes an off-the-cuff reference of his frustration with the election director because the election director did not follow the statutorily required process before entering into contractual agreements when purchasing new equipment. The finance officer tells you that it puts the finance officer in a difficult situation of having to violate the law to pay the invoices. According to the finance officer, the elections director often refuses to follow county finance policies, and the manager does not want to get involved. You are aware that the elections director, a popular public figure, and the county commissioners have had a challenging relationship in the past, with lots of power struggles.

How do you respond?
Shared Governance within County Government

<table>
<thead>
<tr>
<th>Major State-Mandated Functions</th>
<th>Policy-Setting Authority</th>
<th>Funding Authority / Responsibility</th>
<th>Control Over Personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Register of Deeds</td>
<td>State, County Board</td>
<td>County Board (in the office of personnel and compensation)</td>
<td>County Board</td>
</tr>
<tr>
<td>Sheriff (but County Board sets number of personnel and compensation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Health</td>
<td>State, County Board</td>
<td>County Board</td>
<td>County Board</td>
</tr>
<tr>
<td>(but County Board sets number of personnel and compensation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Schools</td>
<td>State, Local Board of Education</td>
<td>State, County Board</td>
<td>County Board</td>
</tr>
<tr>
<td>(Local Public Health Board)</td>
<td>State, County Board</td>
<td>County Board</td>
<td>County Board</td>
</tr>
<tr>
<td>(Local Public Health Board/Democracy Board)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social Services</td>
<td>State, Local Social Services Board</td>
<td>State, County Board</td>
<td>County Board</td>
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<td>(Local Social Services Board)</td>
<td>State, County Board</td>
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<tr>
<td>(Local Social Services Board/County Board)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elections</td>
<td>State, Local Board of Elections</td>
<td>State, County Board</td>
<td>County Board</td>
</tr>
<tr>
<td>(Local Board of Elections)</td>
<td>State, County Board</td>
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<td>County Board</td>
</tr>
<tr>
<td>(Local Board of Elections/County Board)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community Colleges</td>
<td>State, Community College Board</td>
<td>State, County Board</td>
<td>County Board</td>
</tr>
<tr>
<td>(Community College Board)</td>
<td>State, County Board</td>
<td>County Board</td>
<td>County Board</td>
</tr>
</tbody>
</table>

You're Responsible As An Individual, Too!

Sheriff James received $2,665 check made out to "Washington County Detention"
Sheriff deposited $2,000 in Sheriff's Office bank account and used rest for Sheriff's Office petty cash
Money used for Sheriff Office purposes
Sheriff did not follow LGBFCA requirements
Jury found Sheriff guilty of EMBEZZLEMENT

What Now?

Set expectation of full compliance with accountability
Receive training on financial policies & reports
Develop relationship with finance officer
Appoint audit committee and/or internal auditor
Establish whistleblower process
Continuously review
A county must have a written set of internal controls related to its financial transactions. The nature of these controls will vary based on the size of the unit and its staffing capacity, but there are some minimum requirements.